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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,398	07/17/2000	MELENIE J MURPHY	124-781	4847

7590 04/19/2004

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EXAMINER

HINES, JANA A

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/600,398	Applicant(s) MURPHY ET AL.	
	Examiner Ja-Na Hines	Art Unit 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-56 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38-44, 46 and 49-56 is/are allowed.
- 6) ☒ Claim(s) 45, 47 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendment Entry

1. The amendment filed April 5, 2004 has been entered. Claims 1-37 have been cancelled. Claims 39-49, 51-52 and 54-56 have been amended. Claims 38-56 are under consideration in this office action.

Withdrawal of Rejections

2. The following rejections have been withdrawn in view of applicants' amendments:
 - a) The written description rejection of claim 48 under 35 U.S.C. 112, first paragraph; and
 - b) The rejection of claims 39-44, 46, 49, 51-52 and 54-56 under 35 U.S.C. 112, second paragraph.

Response to Arguments

3. Applicant's arguments filed April 5, 2004 have been fully considered but they are not persuasive.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. The rejection of claims 45 and 47-48 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is maintained. Applicants assert that the claim amendments overcome the rejections, however it is the examiner's position that the amendments do not overcome the rejections for ^{these} the reasons.

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5. Claim 45 is still unclear. In particular, the claim language drawn to said method determining the susceptibility of said target bacteria to said reagent is unclear. It is unclear how this language further limits the subject matter of the claim. Dependent claim 45 is already limited to the method determining the susceptibility of a bacteria to a reagent as cited by claim 38. Therefore the additional recitation is unclear and clarification is required to overcome the rejection.

6. Claim 47 comprises "an immunocapture techniques." However it is unclear if the claim is intending to encompass one or more techniques in view of the confusing language. Therefore clarification is required to overcome the rejection.

7. Claim 48 recites the limitation "the binding fragments thereof" in the claim. Claim 48 is dependant upon claims 45-47 which all depend from claim 38. None of the claims recite binding fragments. Therefore there is insufficient antecedent basis for this limitation in the claim and applicants amendment failed to address this issue.

Allowable Subject Matter

8. Claims 38-44, 46, and 49-56 are allowed.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ja-Na Hines whose telephone number is 571-272-0859. The examiner can normally be reached on Monday-Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ja-Na Hines 
April 14, 2004


LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER